Supreme Court, U.S.
FILED
OCT 21 2005
OFFICE OF THE CLERK

Nos. 04-1244 & 04-1352

In The
Supreme Court of the United States

JOSEPH SCHEIDLER, ET AL.,

Petitioners,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,

Respondents.

OPERATION RESCUE,

Petitioner,

v.

NATIONAL ORGANIZATION FOR WOMEN, INC., ET AL.,

Respondents.

On Writs Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF FOR 47 MEMBERS OF THE UNITED STATES CONGRESS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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BRIEF FOR 47 MEMBERS OF THF UNITED STATES CONGRESS AS *AMICI CURIAE*

INTEREST OF *AMICI CURIAE*

Amici curiae are Members of the United States House of Representatives. Their names, their political affiliations, and the Congressional Districts they represent are listed in the Appendix to this brief. Each Member believes that judicial interpretation of legislation according to plain statutory language is essential to the Constitutional separation of powers by which Congress and the federal judiciary work together as co-equal branches of government. Each Member believes that the statutes at issue in this case speak in plain language, to which this Court should faithfully adhere, making it a crime under the Hobbs Act to commit or threaten violence targeting interstate commerce and authorizing the federal courts to enjoin such conduct in private RICO Act lawsuits.[1]

SUMMARY OF ARGUMENT

When interpreting federal statutes, this Court acts as the "faithful agent" of Congress, with the judiciary and the legislature functioning as co-equal partners in the

[1] No counsel for a party authored this brief in whole or in part, nor did any person or entity, other than *amici curiae* or their counsel, make a monetary contribution to the preparation or submission of this brief. The consent of the parties to the filing of *amici curiae* briefs has been obtained and filed with the Clerk of the Court.

governance of our Nation. Such faithful agency is essential to the Constitutional separation of powers, for it prevents judicial encroachment on Congress's lawmaking role.

Faithful agency requires judicial adherence to plain statutory language, without resort to legislative history absent statutory ambiguity. This is essential to Congress's optimal performance. It provides an incentive for Congress to speak plainly; it discourages manipulation of the legislative record to promote individual lawmakers' agendas; it gives Congress a background of reliable judicial interpretation upon which Congress may depend to legislate; and it militates against this Court acting as Congress's taskmaster.

Interpreting the Hobbs Act as encompassing acts or threats of violence targeting interstate commerce, and interpreting the RICO Act as authorizing injunctive relief in private actions, is consistent with both of two competing theories of statutory interpretation – textualism and intentionalism. Both theories use the same methodology and yield the same result where, as here, statutory language is unambiguous. The text of the Hobbs Act plainly makes it a crime to commit or threaten violence in furtherance of a plan or purpose to obstruct, delay, or affect interstate commerce. The text of the RICO Act plainly authorizes the district courts to address RICO violations with injunctive relief. Thus, the legislative history of those Acts need not be investigated, whether one is a textualist or an intentionalist. Congress has spoken plainly; this Court should listen.

ARGUMENT

I. WHEN INTERPRETING FEDERAL STATUTES, THE SUPREME COURT ACTS AS THE "FAITHFUL AGENT" OF CONGRESS, REMAINING TRUE TO THE LEGISLATORS' WILL.

A. Faithful Agency Has Deep Roots in this Court's Jurisprudence.

It is axiomatic that Congress and the federal judiciary are co-equals in the governance of our Nation, with the Constitution drawing clear lines of demarcation between the legislative and judicial branches. Essential to this partnership is the notion of "faithful agency" – that the Supreme Court of the United States is neither the subordinate nor the taskmaster of Congress, but its partner in implementing legislation. "In our constitutional system, it is widely assumed that federal judges must act as Congress's faithful agents. On that assumption, if Congress legislates within constitutional boundaries, the federal judge's constitutional duty is to decode and follow its commands, particularly where they are clear." John F. Manning, *Textualism and the Equity of the Statute*, 101 Colum. L. Rev. 1, 5 (2001) (footnote omitted).

This assumption is shared by legal commentators across the jurisprudential spectrum. *See, e.g.*, Stephen Breyer, Active Liberty 86 (2005) (explaining that Founders expected judges, when applying codified law, "would remain faithful to the legislators' will"); Frank H. Easterbrook, *Text, History, and Structure in Statutory Interpretation*, 17 Harv. J.L. & Pub. Pol'y 61, 63 (1994) ("We are supposed to be faithful agents, not independent principals."); William N. Eskridge, Jr. & Philip P. Frickey, *Statutory Interpretation as Practical Reasoning*, 42 Stan. L. Rev. 321, 325 (1990) (describing intentionalist theory

that "Court acts as the enacting legislature's faithful servant, discovering and applying the legislature's original intent."); Cass R. Sunstein, *Interpreting Statutes in the Regulatory State*, 103 Harv. L. Rev. 405, 415 (1989) ("According to the most prominent conception of the role of courts in statutory construction, judges are agents or servants of the legislature."); Nicholas S. Zeppos, *Legislative History and the Interpretation of Statutes: Toward a Fact-Finding Model of Statutory Interpretation*, 76 Va. L. Rev. 1295, 1313 (1990) ("Traditional democratic theory suggests that the court interpreting a statute must act as the faithful agent of the legislature's intent.").

Faithful agency is rooted in this Court's earliest jurisprudence – that of the Marshall Court – which "regarded federal judges as faithful agents of the legislature." Manning, *supra*, at 99. Thus, for example, as early as 1818, Chief Justice John Marshall explained that "when the legislature manifests [a] clear understanding of its own intention, which intention consists with its words, courts are bound by it." *United States v. Palmer*, 16 U.S. (3 Wheat.) 610, 630 (1818). The primacy of faithful agency was well settled by the end of the nineteenth century. Manning, *supra*, at 102-05; *see, e.g., United States v. Goldenberg*, 168 U.S. 95, 102-03 (1897) ("The primary and general rule of statutory construction is that the intent of the lawmaker is to be found in the language that he has used. . . . The courts have no function of legislation, and simply seek to ascertain the will of the legislator.").

"Hence, questions about the appropriate method of statutory interpretation must be debated, as they have been for the past century, on the assumption that, in matters of federal statutory interpretation, the federal

judge must act as the faithful agent of Congress." Manning, *supra*, at 127.

B. Faithful Agency Is Essential to the Constitutional Separation of Powers.

Faithful agency is a function of the Constitutional separation of powers. Its converse – unbridled latitude in statutory interpretation – leads to judicial encroachment on Congress's lawmaking role. "[T]he dogma of separation of powers . . . refers lawmaking exclusively to the legislature and would limit the courts to interpretation and application." Roscoe Pound, *The Theory of Judicial Decision*, 36 Harv. L. Rev. 940, 946 (1923). Thus, "when the Supreme Court assimilated the lessons of the separation of powers early in the nineteenth century, the faithful agent theory ultimately came to be its dominant interpretive methodology." Manning, *supra*, at 127.

> The Constitution does not generally prescribe rules of construction. But because all statutory interpretation is 'an interbranch encounter of sorts,' selecting an appropriate interpretive methodology involves inevitable choices about the institutional allocation of power between courts and legislatures. To the extent that our constitutional structure reflects considered judgments about that allocation of such power, it is essential to adopt rules of statutory interpretation that further, rather than detract from, the structural objectives established by the constitutional design.

Manning, *supra*, at 56-57 (footnotes omitted).

Congress rightly expects that the Supreme Court, acting as Congress's faithful agent, will remain true to the

constitutional separation of powers by following the plain language of federal statutes.

II. FAITHFUL AGENCY REQUIRES ADHERENCE TO PLAIN STATUTORY LANGUAGE.

A. The Plain Meaning Rule Precludes Resort to Legislative History Absent Statutory Ambiguity.

Faithful agency requires judicial respect for the plain meaning of statutory language. As Chief Justice Marshall said long ago, "Where there is no ambiguity in the words, there is no room for construction." *United States v. Wiltberger*, 18 U.S. (5 Wheat.) 76, 95-96 (1820). And as Justice Brennan said more recently, "A statute is not 'a nose of wax to be changed from that which the plain language imports. . . .'" *Nat'l Labor Relations Bd. v. Catholic Bishop of Chicago*, 440 U.S. 490, 518 (1979) (Brennan, J., dissenting).

The plain meaning rule restricts resort to extrinsic interpretative aids such as legislative history. "[T]here is no need to refer to the legislative history where the statutory language is clear. 'The plain words and meaning of a statute cannot be overcome by a legislative history which through strained processes of deduction from events of wholly ambiguous significance, may furnish dubious bases for inference in every direction.'" *Ex Parte Collet*, 337 U.S. 55, 61 (1949); *see also* Laurence H. Tribe, Comment, *in* Antonin Scalia, A Matter of Interpretation 66 (1997) ("[I]t is the *text's* meaning, and not the content of anyone's expectations or intentions, that binds us as law."). "Reports to Congress accompanying the introduction of proposed laws may aid the courts in reaching the true

meaning of the legislature in cases of doubtful interpretation," but "when words are free from doubt they must be taken as the final expression of the legislative intent. . . ." *Caminetti v. United States*, 242 U.S. 470, 490 (1917).

This is a "stopping rule" for the courts. "[T]he interpreter stops searching for further evidence of legislative intentions when the statutory text is clear. Further search, into legislative history for example, is permissible only when the statutory text is ambiguous or otherwise lacks a plain meaning." Adrian Vermeule, *Three Strategies of Interpretation*, 42 San Diego L. Rev. 607, 614-15 (2005); *see, e.g., Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 475 (1992) ("[T]he beginning point must be the language of the statute, and when a statute speaks with clarity to an issue judicial inquiry into the statute's meaning, in all but the most extraordinary circumstance, is finished.").

B. The Plain Meaning Rule Is Essential to Congress's Optimal Performance.

The Members of Congress have certain reasonable expectations of their co-equal partner in governance, the federal judiciary. One of those expectations is that the courts will operate as a check on the constitutionality of legislation through exercise of the power of constitutional review. Equally fundamental to our system of checks and balances, however, is the expectation of faithful adherence to the text of federal legislation. Implicit in that expectation is that the judiciary will "read the words of that text as any ordinary Member of Congress would have read them." *Chisom v. Roemer*, 501 U.S. 380, 405 (1991) (Scalia, J., dissenting).

The Members of Congress expect judicial respect for the plain meaning rule, and they rely on this expectation to do their job well.

1. The rule provides an incentive for Congress to speak plainly.

Legislating in plain language is good lawmaking. It promotes predictability and stability in the law, and it is one of the intended benefits of the constitutional separation of powers. Separation-of-power theorists among the Founders "argued that the separation of lawmaking from judging would give legislatures an important incentive to enact clear and constraining laws, rather than granting the judiciary excessive discretion through the statutes enacted." Manning, *supra*, at 67. Plain-language legislating prevents judicial encroachment into legislative functions, which is threatened when legislation is vague.

Judicial adherence to the plain meaning rule encourages the Members of Congress to legislate in plain language, which is good for national governance in both theory and practice.

2. The rule discourages manipulation of the legislative record to promote individual lawmakers' agendas.

The more courts resort to legislative history as an aid to statutory interpretation, the more individual lawmakers might be encouraged to manipulate the legislative record to include material that might not provide reliable clues to the intent of Congress as a whole but instead promote individual views that may or may not have been shared by other Members. Some have argued that "the

practice of consulting legislative history encourages the strategic, surreptitious shaping of the legislative record to favor a particular gloss on the statute, rendering those materials unreliable indicia of intent." Miranda Oshige McGowan, *Against Interpretation*, 42 San Diego L. Rev. 711, 730-731 (2005).

Faithful adherence to the plain meaning rule discourages such manipulation of the legislative record. Given the inherent imprecision of language, legislators cannot always avoid ambiguity which requires an examination of legislative history. But the more the courts look solely to plain language, and the less they resort to legislative history, the less likely it will be that individual lawmakers are tempted to play games with the legislative record.

3. The rule gives Congress a background of reliable judicial interpretation upon which Congress may depend to legislate.

It is of "paramount importance" to Congress that its Members "be able to legislate against a background of clear interpretive rules, so that [Congress] may know the effect of the language it adopts." *Finley v. United States*, 490 U.S. 545, 556 (1989). Of those interpretive rules, the clearest is the plain meaning rule. Faithful adherence to that rule gives Members of Congress a solid foundation for good legislating, secure in the knowledge that their use of plain language will avoid blurring the separation of powers.

4. The rule militates against this Court acting as Congress's taskmaster.

This Court is not subordinate to Congress; nor vice versa. The two branches of government are co-equal partners. Consequently, this Court should eschew jurisprudence that "casts this Court in the role of Congress's taskmaster" where the Court "must regularly check Congress's homework." *Tennessee v. Lane*, 541 U.S. 509, 558 (2004) (Scalia, J., dissenting).

Legislating is a difficult business, rife with bargains and compromise. It is made all the more difficult when courts persistently demand that lawmakers explain themselves in the legislative record behind the text of the statutes themselves. Members of Congress should not be required to lard the legislative record with "homework" explaining their intent, which is the inevitable consequence of persistent straying from the plain meaning rule. The more that happens, the more difficult it becomes for Congress to do its business effectively, as litigants seize upon tidbits of legislative history in attempts to twist plain statutory language as they would wish it to read.

III. THE PLAIN-MEANING CONSTRUCTION OF THE HOBBS ACT AS ENCOMPASSING ACTS OR THRLATS OF VIOLENCE TARGETING INTERSTATE COMMERCE IS CONSISTENT WITH BOTH TEXTUALIST AND INTENTIONALIST APPROACHES TO STATUTORY INTERPRETATION.

A. Textualism and Intentionalism Use the Same Methodology and Yield the Same Result Here.

Federal judges and legal scholars have long debated the appropriate role of legislative history in statutory interpretation.

One school of thought is textualism, which disfavors resort to legislative history in determining legislative intent, preferring an effort to determine what the words of a statute objectively mean rather than what individual legislators might have subjectively intended them to mean. *See, e.g.*, Antonin Scalia, A Matter of Interpretation 16-18, 29-37 (1997); William N. Eskridge, Jr., *The New Textualism*, 37 UCLA L. Rev. 621, 669 (1990); Thomas W. Merrill, *Textualism and the Future of the Chevron Doctrine*, 72 Wash. U.L.Q. 351, 372 (1994). Justice Scalia has described textualism as follows:

> The meaning of terms on the statute books ought to be determined, not on the basis of which meaning can be shown to have been understood by a larger handful of the Members of Congress; but rather on the basis of which meaning is (1) most in accord with context and ordinary usage, and thus most likely to have been understood by the *whole* of Congress which voted on the words of the statute (not to mention the citizens subject

> to it), and (2) most compatible with the surrounding body of law into which the provision must be integrated – a compatibility which, by a benign fiction, we assume Congress always has in mind.

Green v. Bock Laundry Mach. Co., 490 U.S. 504, 528 (1989) (Scalia, J., concurring).

A competing school of thought is intentionalism, which looks beyond statutory text for guidance in determining legislative intent. *See, e.g.*, Bradford C. Mann, *Textualism's Selective Canons of Statutory Construction: Reinvigorating Individual Liberties, Legislative Authority, and Deference to Executive Agencies*, 86 Ky. L.J. 527, 529 (1997); Merrill, *supra*, at 354, 357. Justice Stevens has argued that "we do the country a disservice when we needlessly ignore persuasive evidence of Congress' actual purpose. . . ." *W. Va. Univ. Hosps., Inc. v. Casey*, 499 U.S. 83, 115 (1991) (Stevens, J., dissenting).

Textualism and intentionalism use the same methodology, however, and yield the same result, when statutory language is unambiguous. Such is the situation here.

B. The Text of § 1951(a) Plainly Makes it a Crime to Commit or Threaten Violence Targeting Interstate Commerce.

One of the statutes at issue in this case, 18 U.S.C. § 1951(a), states:

> Whoever in any way or degree obstructs, delays, or affects commerce or the movement of any article or commodity in commerce, by robbery or extortion or attempts or conspires to do so, or commits or threatens physical violence to any person or property in furtherance of a plan or

> purpose to do anything in violation of this section shall be fined under this title or imprisoned not more than twenty years, or both.

Textualists and intentionalists need go no further than the plain language of § 1951(a) to conclude that the statute makes it a crime to commit or threaten violence in furtherance of a plan or purpose to obstruct, delay, or affect interstate commerce. We need only break the statute into its component parts:

> "Whoever in any way or degree obstructs, delays, or affects commerce or movement of any article or commodity in interstate commerce,"
>
> - "by robbery or extortion or attempts or conspires to do so, or"
> - "commits or threatens violence to any person or property in furtherance of a plan or purpose to do anything in violation of this section"
>
> "shall be fined under this title or imprisoned not more than twenty years, or both."

The statute's use of the disjunctive "or" makes plain that a violation can occur "by robbery or extortion" *or* when the offender "commits or threatens violence" targeting interstate commerce. And that is precisely how this Court has previously read § 1951(a) – as punishing "interference with interstate commerce by extortion, robbery or physical violence." *Stirone v. United States*, 361 U.S. 212, 215 (1960).

The language of the Hobbs Act tells both textualists and intentionalists all they need to know about legislative intent.

C. The Context of the Hobbs Act – Its Title – Verifies Its Plain Meaning.

Something else on which textualists and intentionalists agree is that "'the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used.'" *Smith v. United States*, 508 U.S. 223, 241 (1993) (Scalia, J., dissenting). Even textualists "acknowledge that language has meaning only in context." Manning, *supra*, at 108.

The context of § 1951(a) includes its title: "Interference with commerce by threats or violence." As far back as the Marshall era, this Court held that although the title of an act cannot trump its plain text, the title "may furnish some aid in showing what was in the mind of the legislature." *Palmer*, 16 U.S. (3 Wheat.) at 631; *see also United States v. Fisher*, 6 U.S. (2 Cranch) 358, 386 (1805) (stating that title can be used to "assist in removing ambiguities"). This Court has repeatedly restated that rule. *See, e.g., Almendarez-Torres v. United States*, 523 U.S. 224, 233-34 (1998); *Rector of Holy Trinity Church v. United States*, 143 U.S. 457, 462 (1892).

Thus, both the plain language of the Hobbs Act and its title demonstrate Congress's intent – that § 1951(a) encompasses acts or threats of violence targeting interstate commerce. Even the rule of lenity must yield to that intent. *See Wiltberger*, 18 U.S. (5 Wheat.) at 95.

IV. THE PLAIN-MEANING CONSTRUCTION OF THE RICO ACT AS AUTHORIZING INJUNCTIVE RELIEF IN PRIVATE ACTIONS IS CONSISTENT WITH BOTH TEXTUALIST AND INTENTIONALIST APPROACHES TO STATUTORY INTERPRETATION.

The other statute at issue in this case, 18 U.S.C. § 1964(a), states: "The district courts of the United States shall have jurisdiction to prevent and restrain violations of section 1962 of this chapter by issuing appropriate orders. . . ." That says all a textualist or an intentionalist needs to know about the legislative intent underlying § 1964(a). This provision of the RICO Act authorizes courts to issue a restraining order – that is, injunctive relief. As with § 1951(a), there is no need to go further.

The briefs of Petitioners and the United States contend the RICO Act does not authorize injunctive relief for private parties because injunctive relief is not mentioned in the private action provisions of § 1964(c). But here again, as with the Hobbs Act, context verifies plain meaning. Subsection (c) of § 1964 does not appear in isolation, but alongside subsection (a) of the statute, which plainly authorizes the district courts to address RICO violations with injunctive relief.

V. THE LEGISLATIVE HISTORIES OF § 1951(a) AND § 1964(a) NEED NOT BE INVESTIGATED.

The briefs of Petitioners and the United States rely heavily on legislative history to advance their convoluted interpretations of § 1951(a) (including the text and history of the Hobbs Act's 1934 predecessor, the text of the Hobbs Act in its original 1946 form, House and Senate reports on

the Hobbs Act's 1948 revision, the Reviser's Notes for the 1948 revision, and even the personal comments of Representative Hobbs) and § 1964(a) (including failed competing bills, subcommittee hearings, and floor debates). Given the plain meaning of both statutes, these legislative histories need not be investigated – nor should they be.

CONCLUSION

Congress spoke plainly in 1948 when making it a crime to commit or threaten violence targeting interstate commerce, and spoke plainly in 1970 when authorizing injunctive relief for RICO violations. No less now than then, the Members of Congress need assurance that when they speak plainly, this Court listens.

Respectfully submitted,

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